

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-209854

DATE: December 16, 1982

MATTER OF: Island Equipment Company

DIGEST:

GAO will not review an agency's decision to perform in-house, rather than contract out, when the agency has not issued a competitive solicitation for purposes of determining the cost of contracting out; the decision in such cases does not result from use of the competitive bid system, and is merely an agency's implementation of executive branch policy regarding contracting out, a matter not reviewed by GAO.

Island Equipment Company, a small business whose plant and warehouse are located in Tamuning, Guam, protests a determination by the Air Force to expand its own production capability for liquid oxygen in order to meet annual requirements, rather than contract out. We dismiss the protest.

Island Equipment holds a 1-year requirements contract, No. N61119-82-D-0024, with the U.S. Naval Supply Depot, FPO San Francisco; this contract was effective March 16, 1982. Correspondence submitted with the protest indicates that the firm has been supplying liquid oxygen to the Navy, which acts as purchasing agent for all military activities on Guam, since 1958.

The firm challenges the cost data that the Air Force used to determine that it would be most economical to use an existing "back up" plant with diesel equipment and to procure electric equipment for a new plant to begin operation about December 1, 1982, at Andersen Air Force Base. Island Equipment argues that if its current contract is not renewed, liquid and cylinder oxygen will not be available for use by hospitals and in commercial operations on Guam; that jobs for island residents will be eliminated; and that the Air Force will pay more for the product.

First, we note that the protest may not be timely. The Air Force apparently completed the cost study on March 26, 1982, but Island Equipment did not protest to our Office until November 16, 1982. Our procedures, at 4 C.F.R. § 21.2 (1982) require protests to be filed within 10 working days after the basis for them is known or should have been known. In addition, Island Equipment apparently did not exhaust its administrative appeal procedures with the Air Force, a step which we require in connection with challenges to cost studies made under Office of Management and Budget Circular A-76. (The Air Force informally advises us that this was such a study.) See Suburban Lawn & Landscape Service, Inc., B-209206, October 13, 1982, 82-2 CPD 334. Island Equipment, however, argues that it did not receive notice of the Air Force decision to produce its own liquid oxygen in time to request review within the 5 days available under Defense Acquisition Regulation §§ 4-1202 and 7-20032.89(c) (DAC 76-28, July 15, 1981).

In any event, our Office will review A-76 cost comparisons only in connection with a competitive solicitation that has been issued for the purpose of ascertaining the cost of contracting out. In such cases, we consider protests based on allegations that the resulting comparison with the cost of performing in-house is faulty or misleading, Electronic Processing, Inc., B-208952, November 10, 1982, 82-2 CPD _____. This is to insure that bidders have not been induced to prepare and submit bids that are then arbitrarily rejected because of erroneous cost comparisons. Urban Enterprises, B-201619, February 17, 1981, 81-1 CPD 101.

Since no new solicitation has been issued for the services covered by Island Equipment's current contract, we must regard the Air Force decision to produce its own liquid oxygen as a policy matter to be resolved within the executive branch, not by our Office. See Electronic Processing, Inc., supra.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel